

ESTTA Tracking number: **ESTTA456969**Filing date: **02/16/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Plentyoffish Media, Inc.		
Entity	Corporation	Citizenship	Canada
Address	555 West Hastings Street, #2625 Vancouver, BC V6B4N5 CANADA		

Attorney information	Kevin S. Costanza Seed IP Law Group LLP 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES kevinc@Seedlp.com, litcal@Seedlp.com Phone:206-622-4900
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Registration Subject to Cancellation

Registration No	4099815	Registration date	02/14/2012
Registrant	Maya, Miguel A. 89-87 218th place New York, NY 11427 UNITED STATES		

Goods/Services Subject to Cancellation


Class 035. First Use: 2011/12/15 First Use In Commerce: 2011/12/15
All goods and services in the class are cancelled, namely: online business directories featuring listings of professional service providers

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)
Other	Non-use

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3302508	Application Date	08/04/2006
Registration Date	10/02/2007	Foreign Priority Date	NONE

Word Mark	PLENTY OF FISH
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 038. First use: First Use: 2001/05/31 First Use In Commerce: 2001/05/31 Providing on-line forums for the transmission of messages among computer users concerning making acquaintances, friendship, dating, long-term relationships and marriage</p> <p>Class 045. First use: First Use: 2001/05/31 First Use In Commerce: 2001/05/31 Computer services, namely, providing web-site services featuring on-line dating</p>

U.S. Registration No.	3251639	Application Date	08/04/2006
Registration Date	06/12/2007	Foreign Priority Date	NONE
Word Mark	PLENTYOFFISH		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 038. First use: First Use: 2001/05/31 First Use In Commerce: 2001/05/31 Providing on-line forums for the transmission of messages among computer users concerning making acquaintances, friendship, dating, long-term relationships and marriage</p> <p>Class 045. First use: First Use: 2001/05/31 First Use In Commerce: 2001/05/31 Computer services, namely, providing information regarding, and in the nature of, on-line dating and introduction services</p>		

Attachments	78945004#TMSN.jpeg (1 page)(bytes) 78945018#TMSN.jpeg (1 page)(bytes) Petition to Cancel.pdf (8 pages)(617721 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kevin S. Costanza/
Name	Kevin S. Costanza
Date	02/16/2012

Plentyoffish Media Inc.

V.

Respondent.

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Registration No. 4,099,815

Docket No. 750065.808

Petitioner Plentyoffish Media Inc. (“Petitioner”) hereby requests that the Trademark Trial and Appeal Board cancel United States Trademark Registration No. 4,099,815 (“the ‘815 Registration” or “Respondent’s Registration”) for the mark PLENTYOFPROS (“Respondent’s Mark”), issued to Respondent Miguel A. Maya (“Respondent”) on February 14, 2012 for the following services:

The grounds asserted by Petitioner for cancellation are as follows:

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software version of its online introduction, acquaintance, dating and social networking services designed for mobile devices.

2. On or before May 31, 2001, well prior to the July 31, 2010 filing date of Respondent's intent-to-use application and subsequent registration date of February 14, 2012, Petitioner adopted and, since then, has continuously used the marks "PLENTY OF FISH" and "PLENTYOFFISH" as trademarks in interstate commerce in the United States.

3. Petitioner is the owner of the following U.S. Trademark Registrations.

Registration No./Date	Mark	Class/Description
3,302,508 July 10, 2002	PLENTY OF FISH	38: Providing on-line forums for the transmission of messages among computer users concerning making acquaintances, friendship, dating, long-term relationships and marriage 45: Computer services, namely, providing web-site services featuring on-line dating
3,251,639 June 12, 2007	PLENTYOFFISH	38: Providing on-line forums for the transmission of messages among computer users concerning making acquaintances, friendship, dating, long-term relationships and marriage 45: Computer services, namely, providing information regarding, and in the nature of, on-line dating and introduction services

4. Since commencing use of the marks "PLENTY OF FISH" and "PLENTYOFFISH" ("Petitioner's Marks"), Petitioner has generated and continues to generate substantial revenue from the provision of services in connection with the marks in the United States. Additionally, Petitioner has expended and Petitioner continues to expend substantial sums of money, time, and effort in advertising, promoting and popularizing Petitioner's Marks in the United States.

5. As a result of the use of Petitioner's Marks as alleged above, and the advertising and promotion of services offered in connection with Petitioner's Marks, Petitioner's Marks have become well known in the United States and are recognized as identifying Petitioner's high-quality services. Thus, Petitioner's Marks and the associated goodwill are valuable assets of Petitioner.

6. Respondent's Mark consists of the words "PLENTYOFPROS." The term "PLENTYOF" is the dominant portion of Respondent's registered mark. Thus, the dominant portion of Respondent's Mark is identical to a dominant portion of Petitioner's Marks.

7. Respondent's recited online directory services are closely related, if not identical, to at least a portion of Petitioner's online and computer services related to making introductions, making acquaintances and making other connections between people.

8. Respondent's described services are so closely related to Petitioner's services that confusion is likely to result if the parties' respective services are marketed and sold under the same or confusingly similar marks.

9. Respondent's "PLENTYOFPROS" mark, for the described services, is confusingly and deceptively similar to Petitioner's Marks, for Petitioner's above-described services, such that the trade and purchasing public will be confused by and deceived into believing that Respondent's services originate with Petitioner, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Petitioner.

10. To the extent there is any likelihood of confusion between Respondent's '815 registered mark and Petitioner's Mark, Petitioner is the senior user and entitled to cancellation of Respondent's Trademark Registration No. 4,099,815.

11. Respondents "PLENTYOFPROS" mark, if used in commerce, also dilutes or is likely to cause dilution of Petitioner's Marks.

12. Upon information and belief, Respondent has never used the “PLENTYOFPROS” mark in U.S. interstate commerce for any of the services described in Respondent’s registration.

13. Upon information and belief Respondent has never used the “PLENTYOFPROS” mark in U.S. interstate commerce for online business directory services, as claimed in the registration.

14. The specimen submitted by Respondent to the U.S. Trademark Office in support of its application depicts only a mockup or a parked page (e.g., an “Under Construction” page) where no actual services are offered, despite Respondent’s claim that the services offered under the mark are online services.

15. A mere mockup is not actual trademark use, per Section 904.04(A) of the T.M.E.P.

16. Upon information and belief, Respondent is not currently using Respondent’s mark for any of the services recited in the application.

17. To the extent that Respondent ever used the “PLENTYOFPROS” mark in commerce for the services in his registration, Respondent has ceased use of the mark on or in connection with such services.

Count I - Fraud

18. When Respondent submitted a Statement of Use in the subject application, alleging that Respondent’s mark was in use in connection with all of the services recited in Respondent’s Registration, Respondent knew that it was not using the mark on any services recited in the registration.

19. Respondent intended to deceive the U.S. Trademark Office by falsely claiming use in U.S. interstate commerce as a trademark for “PLENTYOFPROS” for the

services recited in the registration when it knew that the mark was not used as a trademark for any of the services recited in the registration.

20. Petitioner is entitled to cancel Respondent's registration of "PLENTYOFPROS" because Respondent committed fraud in claiming use in U.S. interstate commerce of "PLENTYOFPROS" as a trademark for all of the services recited in the application.

Count II – Non-Use

21. Respondent's claim of use in U.S. interstate commerce of "PLENTYOFPROS" as a trademark for the services recited in Respondent's Registration is false.

22. Petitioner is entitled to cancel Respondent's registration of "PLENTYOFPROS" because Respondent has not used the mark on the services recited in the registration. Accordingly, Respondent has not established a right to a federal trademark registration.

Count III - Abandonment

23. Respondent has abandoned any rights he may have had in the "PLENTYOFPROS" mark in the United States due to discontinuance of use with an intent not to resume any use as a trademark.

Count IV – Likelihood of Confusion

24. Petitioner is entitled to cancel Respondent's registration of "PLENTYOFPROS" based on Petitioner's senior, registered rights in "PLENTYOFFISH" and "PLENTY OF FISH", and a likelihood of confusion of its mark with Respondent's "PLENTYOFPROS" mark.

Count V – Descriptiveness

25. Respondent's mark "PLENTYOFPROS" is merely descriptive of a directory listing containing "plenty" of professionals, which online users can search and peruse to find a particular "pro".

26. Respondent has provided no evidence that its mark "PLENTYOFPROS" has acquired distinctiveness as a trademark in connection with the services recited in the registration.

27. Petitioner is entitled to cancel Respondent's registration because it is not distinctive or otherwise protectable as a mark.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained and Registration No. 4,099,815 be cancelled.

Correspondence Address

Please direct all communications to:

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DATED this 16th day of February, 2012.

Respectfully submitted,
SEED IP Law Group PLLC



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Attorneys for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2012, the foregoing **PETITION FOR CANCELLATION** was served upon Respondent by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

Miguel A. Maya
89-87 218th Place
New York, NY 11427

A handwritten signature in cursive script, appearing to read "Anne Calico", written in dark ink.

Anne Calico